

Senate Joint Resolution No. 34

RESOLUTION CHAPTER 71

Senate Joint Resolution No. 34—Relative to California wines.

[Filed with Secretary of State August 4, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SJR 34, Padilla. California wines: sales.

This measure would urge Congress to defeat H.R. 5034 in order to protect and preserve the ability of California wineries, and all wineries in the United States, to ship wine directly to consumers without discrimination between in-state and out-of-state wine producers.

WHEREAS, California is the fourth largest wine producing region in the world, after France, Italy, and Spain; and

WHEREAS, California has 2,972 bonded wineries; and

WHEREAS, California has 4,600 winegrape growers; and

WHEREAS, California has 531,000 acres of winegrapes; and

WHEREAS, California winegrowers ship over 193 million cases, representing some 467 million gallons of wine to the United States wine market; and

WHEREAS, The California wine industry creates more than 330,000 jobs, billions of dollars in economic impact, and preserves agricultural land and family farms; and

WHEREAS, The California wine industry generates higher taxes than most industries because, as a regulated industry, it pays excise taxes to the state and federal government on every gallon of wine; and

WHEREAS, The California wine industry has an annual impact of \$61.5 billion on the state's economy and produces the number one finished agricultural product in the state; and

WHEREAS, The economic impact of the United States wine industry on the national economy is \$121.8 billion annually; and

WHEREAS, California's wine industry attracts 20.7 million tourists annually to all regions of California and generates wine-related tourism expenditures of \$2.1 billion; and

WHEREAS, Currently 37 states and the District of Columbia allow direct shipping of wine from winegrowers to consumers; and

WHEREAS, The innovation and entrepreneurial spirit of small California wineries drives the entire industry to improve and progress; and

WHEREAS, In order to reach consumers in other states, many California wineries have turned to direct marketing and shipping of their wines; and

WHEREAS, Since 1985 California has pioneered consumer access to wine through reciprocal and permit shipping to alleviate scarcity at the retail level of California wines; and

WHEREAS, Over the past 10 years, consolidation trends within the wholesale tier have made it difficult for California wineries to achieve adequate distribution, and, as a result, have limited consumer choice; and

WHEREAS, California wineries have offered voluntarily to have their direct marketing and shipping permitted and regulated by other states to ensure that those states collect the same taxes that wines sold through the three-tier system must pay, that direct deliveries would be made only to adults, and that direct deliveries are not made in “dry” areas, as defined under the laws of each state; and

WHEREAS, The California wine industry has developed comprehensive model direct shipping legislation to address all of the concerns expressed by state alcohol regulators across the country; and

WHEREAS, California has enacted a law to open direct shipping of wine from other states to its own residents without limitation through a simple permit system to comply with the decision in *Granholm v. Heald* (2005) 544 U.S. 460; and

WHEREAS, States’ rights to regulate wine and alcohol granted by the 21st Amendment to the United States Constitution have always been subject to constitutional limitation and judicial review; and

WHEREAS, Court decisions over the last 40 years balance state authority to regulate alcohol with the framer’s belief that the nation would only succeed if interstate commerce thrived; and

WHEREAS, The Commerce Clause has been applied judiciously by the courts to foster national economic goals while preserving nondiscriminatory state authority; and

WHEREAS, The landmark 2005 United States Supreme Court case, *Granholm v. Heald*, reaffirmed states’ rights under the 21st Amendment to the United States Constitution to regulate wine as long as they do not discriminate between in-state producers and out-of-state producers, and correctly ruled that these rights do not supersede other provisions of the Constitution; and

WHEREAS, H.R. 5034 would severely limit consumer choice in California wine throughout the nation as direct-to-consumer laws are amended or repealed; and

WHEREAS, H.R. 5034 would imperil market access for California wineries that cannot secure effective wholesale distribution; and

WHEREAS, H.R. 5034 would stunt competition among the nation’s 7,011 wine producers as markets are artificially constrained and access is limited; and

WHEREAS, H.R. 5034 would allow certain state alcohol laws to avoid judicial scrutiny through a presumption of validity; and

WHEREAS, H.R. 5034 would reverse decades of long-established jurisprudence that has balanced interstate commerce concerns with state

regulatory authority and fostered a dramatic growth in wine production, sales, and tax revenue; and

WHEREAS, H.R. 5034 would insulate and sanction discriminatory state laws by reversing evidentiary rules for Commerce Clause legal challenges and increasing the burden of proof of plaintiffs; and

WHEREAS, H.R. 5034 would frustrate legitimate challenges to superficially neutral, but nonetheless discriminatory, state laws like the landmark Massachusetts production cap case, *Family Winemakers of California v. Jenkins* (2010) 592 F.3d 1; and

WHEREAS, H.R. 5034 would be an unprecedented shift in the relationship between federal and state authority over wine; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California hereby respectfully urges Congress to protect and preserve the ability of California wineries, as well as all American wineries, to ship wine directly to consumers without discrimination between in-state and out-of-state wine producers; and be it further

Resolved, That the Legislature of the State of California urges the defeat of H.R. 5034; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the President pro tempore of the United States Senate, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.